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No. 87-1517

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ST. JOHNS COUNTY, FLORIDA,

Petitioner,

v.

SYLVESTER LUCAS,

Respondent,

and

FRANCIS O'LOUGHLIN, ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

Wm. J. Sheppard
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

COUNSEL FOR RESPONDENT

QUESTION PRESENTED

WHETHER THE COURT SHOULD REVIEW A DECISION OF THE COURT OF APPEALS HOLDING THAT THE ACTS OF A COUNTY SHERIFF IN DISMISSING DEPUTY REPRESENTED OFFICIAL POLICY WHERE, AS A MATTER OF STATE LAW, THE SHERIFF HAS ABSOLUTE AND UNFETTERED AUTHORITY OVER THE APPOINTMENT AND CONTROL OF DEPUTIES.

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STATEMENT OF THE CASE

On November 1, 1975, the respondent, Sylvester Lucas, was appointed as the classification officer at the St. Johns County Jail by the then-Sheriff. Within two weeks he was promoted to jail administrator, and he was made captain within a year and a half.

In 1983, the respondent received information that the head cook at the St. Johns County Jail was stealing food from the jail. He began investigating the allegations. In keeping with a strict chain of command within the sheriff's office, the respondent took his investigative report to his immediate superior on two occasions. After concluding his superiors were not interested, the appellant closed his investigative file.

On March 2, 1984, the respondent was subpoenaed by the State Attorney's Office to give a sworn statement on his investigation into food theft. The

respondent informed his superior at the Sheriff's Office of the subpoena, provided the State Attorney's Office with a copy of his investigative report, and testified pursuant to the subpoena. On April 10, 1984, after being questioned by a superior about his involvement in the State Attorney's Office investigation, the respondent was ordered to report to the office of the Sheriff, where he delivered his investigative report to the Sheriff. The Sheriff read the report out loud, and upon reading the final section, wherein respondent's notes reflected the apparent disinterest of "top management" in the investigation, threatened the respondent. Two days later, the respondent was suspended by the Sheriff ostensibly for "dereliction of duty" and some four weeks later he was terminated.

On August 31, 1984, the respondent filed a complaint pursuant to 42 U.S.C. §§1983 and 1985 against Francis O'Loughlin,

individually and in his official capacity as Sheriff of St. Johns County; Ronald Janson, individually and in his official capacity as Captain of Auxiliary Services; and St. Johns County. The complaint alleged: that the defendants had suspended and terminated the respondent in violation of the due process guarantees of the Fourteenth Amendment to the United States Constitution; that the defendants punished the respondent for exercising his right to speak freely, in contravention of the First Amendment; that the defendants conspired to deter the respondent and others from testifying in court; and that the defendants conspired to deprive the respondent of his rights under the law. St. Johns County answered, consistently denying sufficient knowledge to respond to the allegations, and denying participation by the County in the alleged wrongdoing.

The respondent moved for summary judgment against the County, attaching to

the motion a stipulation between the appellant and the County in which the parties agreed that the Sheriff had complete independence, and was the final authority, in making hiring, firing, and other personnel decisions within the Sheriff's Office. The County also moved for summary judgment, arguing that since the Board of County Commissioners participated in the termination through neither direct action or policy, the County could not be held accountable. During trial, the District Court granted the County's motion. The trial proceeded against the defendant, Sheriff of St. Johns County, verdict and judgment being for the plaintiff in the amount of $17,100 back pay, and $1,000 embarrassment and humiliation.

The respondent moved for further equitable relief, including reinstatement and incidental back pay, which was denied. The County then moved for attorney's fees

and costs, contending the claim against the County was frivolous. The trial court awarded attorney's fees to the County in the amount of $10,000.00, and costs in the amount of $1,177.09.

Respondent appealed the dismissal of the County as a defendant, the denial of reinstatement, and the award of attorney's fees and costs to the County, to the Court of Appeals for the Eleventh Circuit. (As stated in the Petition for Writ of Certiorari, Petition, at page 11, fn. 5, only the dismissal of the County is pertinent to this appeal.) The Eleventh Circuit reversed, finding the County liable for the Sheriff's actions based on state law, and this appeal followed.

SUMMARY OF THE ARGUMENT

None of the reasons or arguments presented in the Petition for Writ of Certiorari warrant the granting of the writ. The decision of the United States Court of Appeals for the Eleventh Circuit does not conflict with the opinions of this Court nor does the opinion below reflect a conflict among the Courts of Appeals on the issues raised.

ARGUMENT

The petitioner presents two reasons the Court should grant review in this case. First, the petitioner asserts the decision below "is in direct conflict with this Court's decisions in Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S.Ct. 1292 (1986), and Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 1292 (1978), that a municipality cannot be held liable under 42 U.S.C. § 1983 on a theory of respondeat superior." This assertion is erroneous. The Eleventh Circuit in fact began its discussion in this case with a quotation from Monell:

> We conclude therefore that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under 1984. 436 U.S. at 694, 98 S.Ct. at 2037 (emphasis added.)

Lucas v. O'Loughlin, 831 F.2d 232, 234 (11th Cir. 1987)(emphasis in original).

It was not under a respondeat superior analysis that the Eleventh Circuit found liability. Rather, it found, as a matter of state law, that the sheriff was the final authority or ultimate repository of county power with regard to the particular actions in question:

> Although elected by virtue of state law, he was elected to serve the county as sheriff. In that capacity, he had absolute authority over the appointment and control of his deputies. His and their salaries were paid by local taxation and according to a budget approved by the county commissioners. We conclude, therefore, that his act was the act of St. Johns County.

Id. at 235.

The Court of Appeals' finding that the sheriff's actions constituted official county policy by virtue of his final authority in the employment and control of deputies is consistent with Pembaur and Monell. It is also consistent with this

Court's recent opinion in City of St. Louis v. Praprotnik, ____ U.S. ____, 56 U.S.L.W. 4201 (March 2, 1988) (discussed infra.)

In advancing its first argument the petitioner asserts the Court of Appeals erred when it "considered only whether the sheriff's authority was final, and gave no consideration to source of the sheriff's authority." The Court below was clear about the source of the sheriff's absolute authority. This authority is expressly granted in Florida Statutes, §§ 30.53 and 30.07. Lucas, 831 F.2d at 234, fn. 1. Although elected by state law "he served the county." Clearly, the sheriff is the county to the extent authorized by law. The Court below properly characterized the Sheriff's duties as an effectuation of local rather than state policy, despite the

statutory derivation of his authority. His actions were thus deemed to represent the county in this particular area of activity. 831 F.2d at 235. As this Court said in City of St. Louis:

> "Authority to make municipal policy may be granted directly by a legislative enactment or may be delegated by an official who possesses such authority, and of course, whether an official had final policymaking authority is a question of state law." Pembaur v. Cincinnati, 475 U.S., at 483 (Plurality opinion).

56 U.S.L.W. at 4204.

The petitioner's focus on "causation" is misplaced. The issue is not whether the governing body of the county or its sheriff made or delegated the particular decision involved. Such authority "may be granted directly by legislative enactment." Id. The question is whether the sheriff's unconstitutional action was officially committed by the county. Under the tests developed by this Court, it clearly was.

The petitioner's concern that public coffers "no doubt will be seriously drained by the defense of countless civil rights actions" if this Court does not reverse is unsupported and, if considered at all, must be weighed against the result sought by the petitioner, i.e., "to insulate themselves from liability for unconstitutional policies." Id. at 4205.

The second reason the petitioner posits for this Court is grant review is similarly without merit. The petitioner asserts the necessity of this Court's resolving a "direct conflict" between the decision below and other Courts of Appeals in Bennett v. City of Slidell, 728 F.2d 762 (5th Cir. 1982) and McKinley v. City of Eloy, 705 F.2d 1110 (9th Cir. 1983). The decision below does not conflict with either decision. More importantly, this Court granted certiorari in Pembaur, expressly to resolve conflicts between the Courts of Appeals in this area of the law.

Pembaur, 89 L.Ed. at 461 (citing City of Eloy in fn. 4). Pembaur, decided one and two years after City of Eloy and City of Slidell, respectively, and this Court's recent opinion in City of St. Louis have resolved any conflicts asserted by the petitioner. Further interpretation at this time would seem unnecessary.

In City of St. Louis, this Court reaffirmed "several guiding principles" articulated in Justice Brennan's plurality opinion in Pembaur:

> First, a majority of the Court agreed that municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." 475 U.S., at 480. Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to § 1983 liability. Id., at 483. Third, whether a particular official has "final policymaking authority" is a question of state law. Ibid. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the city's business. Id., at 482-483, and n. 12.

56 U.S.L.W. at 4204. It is beyond argument that three of the four Pembaur principles apply here: the sheriff clearly (1) "has final policymaking authority" (2) as a matter of "state law" (3) in "that area of the [municipality's] business involved." As to the first principle, i.e., that the "municipality has officially sanctioned or ordered the unconstitutional conduct," City of St. Louis likewise illustrates the correctness of the result below. While in City of St. Louis this principle arose in the context of "delegation," this Court's language is instructive.

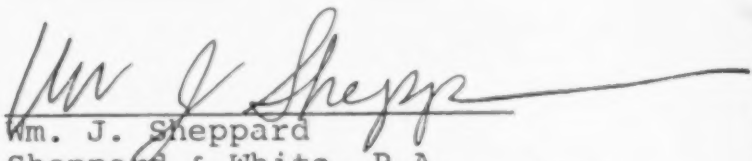
> First, whatever analysis is used to identify municipal policymakers, egregious attempts by local government to insulate themselves from liability for unconstitutional policies are precluded by a separate doctrine. Relying on the language of § 1983, the Court has long recognized that a plaintiff may be able to prove the existence of a widespread practice that, although not authorized by written law or express municipal policy, is "so permanent and well settled as to constitute a 'custom or usage' with the force of law."

Id. at 5205 (citations omitted). Moreover, this Court explicitly stated: "...[w]e think it is self-evident that official policies can only be adopted by those legally charged with doing so." Id. at fn. 2. The sheriff of St. Johns County was so charged, by state law, and his unconstitutional actions unquestionably represented the "official policy" of the county. Accordingly, the Court should deny a writ of certiorari.

CONCLUSION

This case does not warrant the Court's review. The decision of the Court of Appeals for the Eleventh Circuit is consistent with the decisions of this Court. No conflict between the decision below and the law in other Courts of Appeals has been demonstrated. Accordingly, this Court should deny certiorari review.

Respectfully submitted,



Wm. J. Sheppard
Sheppard & White, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Petition for Writ of Certiorari have been served this 11 day of April, 1988 by first class United States mail upon the following:

Peter Reed Corbin
Corbin & Dickinson
Post Office Box 41566
Jacksonville, Florida 32203

Gayle Smith Swedmark, Esquire
Parker, Skelding, Costigan,
McVoy & Labasky
Post Office Box 669
Tallahassee, FL 32302-0669

Wm. J. Sheppard